



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/121,617	09/16/93	BACKSTROM	R 020325053

12M1/0314

HALEY, J EXAMINER

BENTON S. DUFFETT, JR.
BURNS, DOANE, SWECKER & MATHIS
THE GEORGE MASON BLDG., P.O. BOX 1404
WASHINGTON & PRINCE STREETS
ALEXANDRIA, VA 22313-1404

ART UNIT	PAPER NUMBER
1201	13

03/14/95

DATE MAILED:

NOTICE OF ALLOWABILITY

PART I.

- This communication is responsive to Amendment of 3-2-95
- All the claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice Of Allowance And Issue Fee Due or other appropriate communication will be sent in due course.
- The allowed claims are 29-32 renumbered as 1-4, respectively
- The drawings filed on _____ are acceptable.
- Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has [] been received. [] not been received. [] been filed in parent application Serial No. 07/1126,911, filed on 11-29-87
- Note the attached Examiner's Amendment.
- Note the attached Examiner Interview Summary Record, PTO-413.
- Note the attached Examiner's Statement of Reasons for Allowance.
- Note the attached NOTICE OF REFERENCES CITED, PTO-892.
- Note the attached INFORMATION DISCLOSURE CITATION, PTO-1449.

PART II.

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE THREE MONTHS FROM THE "DATE MAILED" indicated on this form. Failure to timely comply will result in the ABANDONMENT of this application. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

- Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION, PTO-152, which discloses that the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.
- APPLICANT MUST MAKE THE DRAWING CHANGES INDICATED BELOW IN THE MANNER SET FORTH ON THE REVERSE SIDE OF THIS PAPER.
 - Drawing informalities are indicated on the NOTICE RE PATENT DRAWINGS, PTO-948, attached hereto or to Paper No. _____ CORRECTION IS REQUIRED.
 - The proposed drawing correction filed on _____ has been approved by the examiner. CORRECTION IS REQUIRED.
 - Approved drawing corrections are described by the examiner in the attached EXAMINER'S AMENDMENT. CORRECTION IS REQUIRED.
 - Formal drawings are now REQUIRED.

Any response to this letter should include in the upper right hand corner, the following information from the NOTICE OF ALLOWANCE AND ISSUE FEE DUE: ISSUE BATCH NUMBER, DATE OF THE NOTICE OF ALLOWANCE, AND SERIAL NUMBER.

Attachments:

- Examiner's Amendment
- Examiner Interview Summary Record, PTO-413
- Reasons for Allowance
- Notice of References Cited, PTO-892
- Information Disclosure Citation, PTO-1449
- Notice of Informal Application, PTO-152
- Notice re Patent Drawings, PTO-948
- Listing of Bonded Draftsmen
- Other

Jacqueline Haley

JACQUELINE HALEY
PATENT EXAMINER
GROUP 1800

Art Unit: 1201

Part III REASONS FOR ALLOWANCE

1. The following is an Examiner's Statement of Reasons for Allowance:

The rejection of the claims herein under the judicially created doctrine of obviousness double patenting is withdrawn after further review of the prosecution history of the parent application and applicant's arguments herein. Accordingly, the case is allowed since no other rejections are outstanding. A review of the prosecution history of the parent has revealed the following facts:

- a. Formal restriction was required between compositions and methods of use (group I) and methods of preparation (group II), see Paper No. 4.
- b. Election of the compositions of group I was made. However, the election of species requirement was fulfilled by election of a species of newly-presented compound claim 32. According to the interview summary record of Paper No. 7, Examiner Richter reaffirmed that applicant chose to prosecute composition claims, and indicates that compound claim 32 should be amended to reflect that it is directed to a composition.
- c. The withdrawal of compound claims 31-32 by Examiner Friedman under 37 CFR 1.142(b) in Paper No. 8 re-emphasizes the indication that patentable distinctness was found. Examiner Friedman withdrew the compound claims in two different Office Actions, see also Paper No. 10.

Art Unit: 1201

Accordingly, since the compound claims were twice indicated as being withdrawn under 37 CFR 1.142(b), such is considered to be tantamount to the requirement for restriction between the elected compositions and methods of using such (on the one hand) and the compounds (on the other hand). The compound claims are protected under the provisions of 35 USC 121 and the earlier-issued patent may not be used as a reference against those claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably **accompany** the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

2. Any inquiry concerning this communication should be directed to Examiner Haley at telephone number (703) 308-4548. The examiner may normally be reached Monday through Friday from 8:30 am until 6:00 pm.

jh
March 13, 1995

Jacqueline Haley
Jacqueline Haley
Patent Examiner
Group 1200